UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/533,409	03/22/2000	Yao Wang	E0295/7106(RAS)	8616

7590 07/27/2006	**EXAMINER**
Robert A Skrivanek Jr	MIRZA, ADNAN M
Wolf Greenfield & Sacks PC	

ART UNIT	PAPER NUMBER
2145	

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DATE MAILED: 07/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *25 April 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-61* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-61* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date _____.

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____.

DETAILED ACTION

Double Patenting

1.   The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees.   A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

2.

        A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

        Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3.   Claims1-61 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims1, 7, 9,16 of prior U.S. P atent No. U.S. 6,898,727. Although the conflicting claims are not identical, they are not patentably distinct from each other because Claims 1-61 has the similar limitation as to claim 1 in U.S. Patent No. 6,898,727).

Claim Rejections - 35 USC § 103

1.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2.   Claims1-61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wahl et al

(U.S. 6,324,654) and in view of Miskowiec (5,915,095).

As per claim 1,29,45,52 Wahl disclosed a method, comprising acts of: detecting a decrease in

performance of a first host computer that results from the first host computer continuing to

function but a decrease performance level (col. 23, lines 55-67 & col. 24, lines 1-6), wherein the

first computer provides computational resources to perform a task (col. 23, lines 55-67 & col. 24,

lines 1-6);

However Wahl did not go in details to disclose automatically configuring a second host

computer to provide additional computational resources for the first host computer in response to

detecting the decrease in performance of the first host computer, so that the first and second host

computers simultaneously provide computational resources to perform the task.

In the same field of endeavor Miskowiec disclosed an exemplary apparatus in accordance with

the principles of the present invention concerns balancing a plurality of received processing

requests among a plurality of servers. The processing requests are received from one or more

network nodes. The apparatus includes a plurality of communication ports are in operative

communication with at least a first server, a second server and a first network node. At least each

of the first and the second servers are operative to run a common application (col. 2, lines 52-61).

In another preferred exemplary embodiment, common subsets of the one or more measurable

characteristic are compared with one another, and or /alternatively with one or more

predetermined values, to identify one or more suitably arranged servers. It should be noted that

comparative-type processing or analysis utilizing one or more measurable characteristic may

suitably be used to allocate one or more servers to run the common application (col. 7, lines 38-

47).

It would have been obvious to one having ordinary skill in the art at the time the invention was

made to have incorporated the automatically configuring a second host computer to provide

additional computational resources for the first host computer in response to the act of detecting.

In another preferred exemplary embodiment, common subsets of the one or more measurable

characteristic are compared with one another, and or /alternatively with one or more

predetermined values, to identify one or more suitably arranged servers. It should be noted that

comparative-type processing or analysis utilizing one or more measurable characteristic may

suitably be used to allocate one or more servers to run the common application as taught by

Miskowiec in the method of Wahl to substantially minimize a time delay while automating the

task management system result in increase perfomrance.

3.   As per claim 2 Wahl-Miskowiec disclosed wherein the first host computer is coupled to

at least one first storage device that is accessible to the first host computer and in which data of

the first host computer is stored (Wahl, col. 5, lines 25-38), and wherein the act of automatically

configuring the second host computer includes an act of (Miskowiec, col. 8, lines 52-63):

replicating the data of the first host computer from the at least one first storage device to at least

one second storage device that is accessible to the second host computer (Wahl, col. 5, lines 25-

38).

4.   As per claim 3 Wahl-Miskowiec disclosed wherein the act of replicating the data is

performed without the first host computer copying the data from the at least one first storage

device (Wahl, col. 5, lines 25-38).

5.   As per claim 4 Wahl-Miskowiec disclosed wherein the act of replicating the data is

performed without the second host computer copying the data to the at least one second storage

device (Wahl, col. 5, lines 39-51).

6.   As per claim 5 Wahl-Miskowiec disclosed wherein the act of replicating the data is

performed without the second host computer copying the data to the at least one second storage

device (Wahl, col. 6, lines 22-29).

7.   As per claims 6,25,30,46 Wahl-Miskowiec disclosed wherein the act of replicating the

data includes an act of replicating all of the data that is used by the first host computer and stored

on the at least one first storage device to the at least one second storage device (Wahl, col. 6,

lines 22-29), and wherein the act of automatically configuring further includes acts of: modifying

a portion of the replicated data that corresponds to configurable parameters of the first host

computer; and bringing the secondary host computer on line using the replicated data and the

modified portion of the replicated data (Wahl, col. 23, lines 55-67 & col. 24, lines 1-6)).

8.   As per claims 7,8,13,14,21,26,33,34,35,39,38,49,50,56 Wahl-Miskowiec disclosed

wherein the act of modifying the portion of the replicated data includes an act of modifying the

portion of the replicated data that corresponds to a network address of the first host computer to

correspond to a different network address (Wahl, col. 8, lines 26-39), the method further

comprising an act of: modifying a network director to redirect at least one communication

addressed to the network address of the first host computer to the different network address

(Wahl, col. 13, lines 49-65).

9.   As per claim 9 Wahl-Miskowiec disclosed wherein the act of automatically configuring

the second host computer further includes an act of: shutting down the second host computer

prior to the act of replicating (Miskowiec, col. 8, lines 52-63).

10.   As per claims 10,48 Wahl-Miskowiec disclosed wherein the first host computer is not

identical to the second host computer, and wherein the act of replicating the data includes an act

of: replicating only a portion of the data that is used by the first host computer and stored on the

at least one first storage device to the at least one second storage device (Wahl, col. 5, lines 25-

38), the portion of the data corresponding to data of the first host computer that can be at least

one of used and executed by the second host computer without modification (Wahl, col. 8, lines

26-39).

11.   As per claims 11,12,32,37,47,58 Wahl-Miskowiec disclosed wherein the act of

replicating the data includes an act of replicating the data from the at least one first storage

device that is located in a first storage system to the at least one second storage device that is

located in a second storage system (Wahl, col. 8, lines 26-39).

12.   As per claim 15 Wahl-Miskowiec disclosed wherein the act of automatically configuring

further includes an act of: transforming at least a portion of the replicated data of the first host

computer for use with the second host computer when the second host computer is not identical

to the first host computer (Wahl, col. 5, lines 25-38).

13.   As per claim 16 Wahl-Miskowiec disclosed wherein the act of automatically configuring

further includes an act of: bringing the second host computer on line using the replicated data of

the first host computer (Miskowiec, col. 8, lines 52-63).

14.   As per claims 17,18,42,43 Wahl-Miskowiec disclosed further comprising acts of:

detecting an increase in the performance of the first host computer subsequent to the act of

automatically configuring; and shutting down the second host computer in response to the act of

detecting the increase in the performance of the first host computer (Miskowiec, col. 8, lines 52-63).

15.   As per claims 19,23,55,59 Wahl-Miskowiec disclosed wherein the first host computer is coupled to a first storage system that includes at least one first storage device that is accessible to the first host computer and in which data of the first host computer is stored (Wahl, col. 8, lines 26-39), wherein the second host computer is coupled to a second storage system that includes at least one second storage device that is accessible to the second host computer and in which data of the second host computer is stored, the second storage system mirroring the data of the second host computer that is stored on the at least one second storage device to at least one third storage device (Wahl, col. 5, lines 25-38), and wherein the act of automatically configuring the second host computer includes acts of: shutting down the second host computer; discontinuing the mirroring of the data of the second host computer; and replicating, subsequent to the act of discontinuing, the data of the first host computer from the at least one first storage device to the at least one second storage device (Miskowiec, col. 8, lines 52-63).

16.   As per claims 20,25 Wahl-Miskowiec disclosed wherein the act of replicating the data includes an act of replicating all of the data that is used by the first host computer and stored on the at least one first storage device to the at least one second storage device (Wahl, col. 5, lines 25-38), and wherein the act of automatically configuring further includes acts of: modifying a portion of the replicated data that corresponds to configurable parameters of the first host

computer; and bringing the secondary host computer on line using the replicated data and the

modified portion of the replicated data (Miskowiec, col. 8, lines 52-63).

17.   As per claims 22,31,36,44,53,54,57 Wahl-Miskowiec disclosed further comprising an act

of: communicating the change in operation of the first host computer to a controller that is

operatively coupled to a storage system and the first host computer; wherein the act of

automatically configuring the second host computer is performed by the controller in response to

the acts of detecting and communicating (Miskowiec, col. 8, lines 52-63).

18.   As per claim 24 Wahl-Miskowiec disclosed further comprising an act of: mirroring data

of the first host computer that is stored on at least one first storage device that is accessible to the

first host computer to at least one second storage device that is accessible to the second host

computer; wherein the act of automatically configuring includes an act of discontinuing the

mirroring of the data to the at least one second storage device in response to the step of detecting

(Wahl, col. 5, lines 25-38).

19.   As per claims 27,28,51 Wahl-Miskowiec disclosed further comprising acts of: detecting a

decrease in performance of a third host computer; and automatically configuring the second host

computer to provide additional computational resources for the third host computer in response

to the act of detecting (Miskowiec, col. 8, lines 52-63).

20.   As per claims 40,61 Wahl-Miskowiec disclosed wherein the controller includes means

for modifying a portion of the replicated data that corresponds to a network address of the first

host computer to correspond to a different network address (Wahl, col. 13, lines 49-65).

21.   As per claims 41,60 Wahl-Miskowiec disclosed wherein the controller further includes a

transformation engine that transforms at least a portion of the replicated data for use by the

second host computer (Wahl, col. 8, lines 26-39).

Response to Arguments

Applicant's arguments filed 04/25/2006 have been fully considered but they are not persuasive.

Applicant's argument as follows.

22.   Applicant argued that the cited portion of Miskowiee doesn't relate to automatic

configuration of servers.

Miskowiee disclosed an exemplary apparatus in accordance with the principles of the present

invention concerns balancing a plurality of received processing requests among a plurality of

servers. The processing requests are received from one or more network nodes. The apparatus

includes a plurality of communication ports are in operative communication with at least a first

server, a second server and a first network node. At least each of the first and the second servers are operative to run a common application (col. 2, lines 52-61). In another preferred exemplary embodiment, common subsets of the one or more measurable characteristic are compared with one another, and or /alternatively with one or more predetermined values, to identify one or more suitably arranged servers. It should be noted that comparative-type processing or analysis utilizing one or more measurable characteristic may suitably be used to allocate one or more servers to run the common application (col. 7, lines 38-47).

Conclusion

23.   Any inquiry concerning this communication or earlier communication from the examiner should be directed to Adnan Mirza whose telephone number is (571)-272-3885.

24.   The examiner can normally be reached on Monday to Friday during normal business hours. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Cardone can be reached on (571)-272-3933. The fax for this group is (703)-746-7239. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

25.   Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published applications

may be obtained from either Private PAIR or Public PAIR. Status information for un published

applications is available through Private PAIR only. For more information about the PAIR

system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR

system, contact the Electronic Business Center (EBC) at (866)-217-9197 (toll-free).

Adnan Mirza

Examiner

JASON CARDONE
SUPERVISORY PATENT EXAMINER